



LA VERKIN CITY PLANNING COMMISSION

Regular Meeting

Wednesday, October 22, 2014 6:00pm

City Council Chambers, 111 South Main Street

LaVerkin, Utah 84745

Present: Chair Anna Andregg; Commissioners: Kelly Wilson and Karl Benson; Staff: Derek Imlay, Kevin Bennett, Kyle Gubler, and Christy Ballard; Public: Richard Hirschi, Toni Imlay, John Valenti, and Lynn Crawford.

Commissioners Hugh Howard and Allen Bice are not present.

I. Call to Order: Chair Anna Andregg called the meeting to order at 6:00pm. The Invocation and Pledge of Allegiance was given by Richard Hirschi.

II. Approval of Minutes:

Commission may approve the minutes of the September 24, 2014 regular meeting.

Motion was made by Commissioner Kelly Wilson to approve the September 24, 2014 regular meeting minutes as written, second by Commissioner Karl Benson. Motion carried unanimously.

III. Approval of Agenda

Motion was made by Commissioner Karl Benson to approve the agenda as written, second by Commissioner Kelly Wilson. Motion carried unanimously.

IV. Reports:

1. Beautification/Trails Committee-No one to report.
2. Director of Operations- Derek reported the developer has started discussion on the Sunset View Estates subdivision again. The project had been put on hold while he took care of other issues. The developer is scheduled to meet with Derek next week to give him the signed copy of the easement from the Bank and then the project can begin moving forward.

Anna was able to get in touch with the ADA person who informed her that, in regard to vacation homes, the homeowner is not obligated to provide any handicap items. If a renter would like to have anything handicap accessible they need to install it themselves, at their own expense, then restore the property to its original condition when they leave.

V. Business:

1. Discussion on subdivision requirements.
Kevin passed out a handout of his presentation (see attached).

He is still moving forward on getting something put together in regard to the rules and regulations for vacation rentals.

This item was put on the agenda because building has started back up again in La Verkin. The information in the packet talks about having the final plat approval sooner in the process.

The State changed the requirements last year so some of La Verkin's current requirements are now outdated and some changes will need to be made. It also impacts our Hillside Ordinance slightly but Kevin thinks that should be okay.

The State has been making changes with security bonds and security insurances. Those changes and the pros and cons of potential changes are included in Kevin's presentation handout.

One of the items the City may need, if they don't have already, is objective inspection standards in writing. The Deputy Attorney from West Valley City, is working on standard infrastructure security forms which he is anticipating be done by the end of the year. That may help us to have something that is actually recognized state wide if we get challenged by a developer, if we decide to allow the alternative.

The Commissioners need to decide if they would like to make only the necessary changes to the current requirements or if they would like to allow early plat approval.

Commissioner Benson asked if the only downside to making the discussed changes is that the City could be left maintaining a road that has no lots developed on it.

Kevin replied that is allegedly the case if the property has changed ownership, so if any of the lots were sold, it becomes the City's responsibility to ensure the infrastructure is put in.

Commissioner Andregg asked how long Kevin would need to get the paperwork completed if the Commissioners decided to move forward with the changes discussed.

Kevin was not sure, but he didn't think it would take very long.

Commissioner Wilson feels that the City should have something in place to guarantee that the infrastructure will be completed and that may require a bond up front.

Commissioner Andregg is interested in making sure the City has the easements so they have the ability to correct problems if the developer walks away.

Commissioner Benson pointed out the downside of requiring bonding up front is pricing some developers out of the market.

Kevin replied that it could, but right now the developer cannot sell any of the property in their development until they receive final approval after everything has been completed.

Bonds are easier for the developer than the City. If we decide to require bonds we will need to be very clear on what our standards are because the first thing that will be looked at is to see if there was a violation.

Commissioner Wilson would like to see bonding required up front and roads dedicated to the City at the beginning of the project.

*Kevin pointed out the City needs to be amenable to phasing developments as long as there is a nice blend of the entire development represented (all lot sizes).

Commissioner Andregg asked what direction the Commissioners felt it should go.

Commissioner Wilson replied developers should be allowed to bond at the beginning so if the project doesn't get finished the City has something to fall back on and also get the dedicated roads.

Commissioner Benson and Commissioner Andregg agreed with Commissioner Wilson.

Kyle pointed out that having the ability to have the roads completed if a developer walks away would probably make the project easier to sell to a new developer.

Kevin agreed and mentioned it would give more confidence to adjoining neighbors if they have developable property.

Commissioner Andregg stated the majority is in favor of making the changes.

VI. Adjourn:

Motion was made by Commissioner Kelly Wilson to adjourn, second by Commissioner Karl Benson. Motion carried unanimously at 6:59pm.

Minutes taken on behalf of the City Recorder by Christy Ballard.



Planning Commission Chair

12-16-14

Date Approved

Presentation to the Planning Commission on Earlier Final Plat Approval (22 Oct 2012)

Kevin R. Bennett, City Attorney

Why we are having this discussion today

- My services were sought, in large part, because of my legal work relative to land use in an area that was undergoing massive development. LaVerkin had been going through a somewhat similar period during the few years immediately before I came; and land use expertise was desired to help with the unprecedented growth and development occurring here.
- Then, almost immediately, it **STOPPED**. We've been in a lull . . . during the greatest recessionary period since the Great Depression.
- What has happened during my nearly 5 years here—from a land use and development perspective?
 - Very little
 - A number of stalled projects – particularly along the foot of the cliffs
 - Some of those just stopped; in others, the funding and cash flow dried up
- We've experience drainage and erosion issues, viewshed issues, easement and access concerns, etc., as a result.
- Now, development is beginning to start back up.

I've reviewed the Title 11 of the City Code relative to subdivisions; and have a few concerns: (that which is in *purple italics* is for another discussion on another day and time)

- *Concern about Staff giving concept approval: premature vesting, by Staff, at such an early stage of the process (before PC or CC may be aware of what is being tacitly approved or agreed to)*
- *Concern about lack of Council (and perhaps Commission) involvement in construction drawings, and requirements set forth therein and allegedly agreed to (and enforceability of such)*
- The inability to go in and “cure” erosion, drainage, and other issues of public concern, where the infrastructure is never completed and the land/easements dedicated to the City
- The lateness at which final plat approval is granted, and the likelihood of PROBLEMS at that late date (if we ever get there!) relative to ownership interests, liens, land disputes, etc.

Some things that I have considered, and wish to have you consider:

- *Do away with “concept approval” in the Code (at least at a point so early in the process that the Planning Commission and/or City Council are unaware of what is being tacitly approved or agreed to)*
- *Enhance what is required for preliminary plat approval. Consider combining requirements for construction drawings with some of those for preliminary plat approval (showing the requirements that aren't merely code-driven, but are planning and ameliorating in character); or at least get early Council approval of such plans. Avoid some of the issues that we had with one of our developments, where requirements were allegedly agreed to at the Staff level and then disputed to the Council when not completed (as allegedly promised).*
- Provide **CHOICE**—i.e., the option for final plat approval to be moved up to a point that is much earlier in the process: the developer can either (a) build, provide a warranty bond, and receive final plat approval or (b) at or after preliminary plat approval, provide improvement completion assurance, receive final plat approval, and build improvements (then provide improvement warranty when improvements have been accepted)
 - What the City gets:
 - Roadway, PUE, and open space dedications “up front” (free of liens)—which we'll have, regardless of whether or not the subdivision is ever developed
 - Bonds and temp. easements, so that basic (and protective/restorative) work can be completed (such as what we introduced in the new hillside ordinance)
 - What the developer gets:
 - Earlier approval
 - Improved cash flow: Developer can sell lots instead of reservations – encourage cash flow (to help finance improvements)
 - Protection for both:
 - Early identification of existing and potential gaps and overlaps, and ownership and encumbrance (including easement) issues

- In accordance with Section 10-9a-604.5, UCA:
 - Reinstitute the concept of improvement completion assurance(s), for the period prior to completion of the improvements
 - Provide for partial releases of the assurance(s) posted
 - Change the 25% warranty bond to the 10% required by State law, to warranty the completed improvements (against, e.g., latent defects) for
- Reinstitute the original construction back to the original 125% bond level: a performance bond and a payment bond – give choice: construct and/or bond for infrastructure/improvements prior to final plat approval

Currently, we have a process where we (may) end up with:

- Partly-finished projects (usually only a portion of the infrastructure, and no buildings, etc.)
- Disturbed environment
 - Blight
 - Erosion
 - Gaps in our town – no longer pristine or agricultural, but not developed
- Negative impact on neighboring properties and neighborhoods
 - Leapfrogging of developments
 - Collection point for trash, weeds, tumbleweeds, etc. – nuisance
- Ownership and lienholder issues and disputes

Additionally, with the way we are currently set up:

- One arguably vests under the law before even coming to the Planning Commission
- The City Council does not discuss and/or approve construction drawings
- Developers lack adequate cash flow to “pay the bills” as they attempt to develop the land, and cannot get it from potential buyers (except for maybe “purchasers” of “reservations”)
- Developers go “belly up” in adverse economic climates before we ever get the easements and road/park dedications; and sometimes infrastructure meant for the City (that runs through the development, e.g., the water line through Sunset View Estates) is built and the easements are never conveyed to the City because the developer “loses” or doesn’t ever complete the project (or project improvements)
- Liens attach to land meant to be conveyed to, or burdened in favor of, the City (which cannot happen once it is in City ownership), which must be “cleared” (if at all) before the City can take the property right/interest → may be difficult at best

The hope is:

- *To have Planning Commission and City Council involvement in and approval of concept*
- *To have Planning Commission and City Council involvement in and approval of construction plans (at least where a requirement is being made or agreed to that is not merely Code-based)*
- To have the City obtain needed easements and dedications, lien-free, regardless of whether or not the development ever proceeds to completion—particularly where additional adjoining or impacted development is dependent on the easements and dedications occurring that are contemplated in the preliminarily-approved but not yet completed developments
- To provide needed cash flow to developers so that they have the financial wherewithal to complete their projects

UCA, 10-9a-103. Definitions.

As used in this chapter:

- (18) "Improvement completion assurance" means a surety bond, letter of credit, cash, or other security required by a municipality to guaranty the proper completion of landscaping or infrastructure that the land use authority has required as a condition precedent to:
- (a) recording a subdivision plat; or
 - (b) beginning development activity.

- (19) **"Improvement warranty"** means an applicant's unconditional warranty that the accepted landscaping or infrastructure:
- (a) complies with the municipality's written standards for design, materials, and workmanship; and
 - (b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.
- (20) **"Improvement warranty period"** means a period:
- (a) no later than one year after a municipality's acceptance of required landscaping; or
 - (b) no later than one year after a municipality's acceptance of required infrastructure, unless the municipality:
 - (i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and
 - (ii) has substantial evidence, on record:
 - (A) of prior poor performance by the applicant; or
 - (B) that the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.

UCA, 10-9a-509.5. Review for application completeness - Substantive application review - Reasonable diligence required for determination of whether improvements or warranty work meets standards - Money damages claim prohibited.

...

- (3)
- (a) With reasonable diligence, each land use authority shall determine whether the installation of required subdivision improvements or the performance of warranty work meets the municipality's adopted standards.
 - (b)
 - (i) An applicant may in writing request the land use authority to accept or reject the applicant's installation of required subdivision improvements or performance of warranty work.
 - (ii) The land use authority shall accept or reject subdivision improvements within 15 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as practicable after that 15-day period if inspection of the subdivision improvements is impeded by winter weather conditions.
 - (iii) The land use authority shall accept or reject the performance of warranty work within 45 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as practicable after that 45-day period if inspection of the warranty work is impeded by winter weather conditions.
 - (c) If a land use authority determines that the installation of required subdivision improvements or the performance of warranty work does not meet the municipality's adopted standards, the land use authority shall comprehensively and with specificity list the reasons for its determination.

10-9a-604. Subdivision plat approval procedure - Effect of not complying.

- (1) A person may not submit a subdivision plat to the county recorder's office for recording unless:
- (a) the person has complied with the requirements of Subsection 10-9a-603(4)(a);
 - (b) the plat has been approved by:
 - (i) the land use authority of the municipality in which the land described in the plat is located; and
 - (ii) other officers that the municipality designates in its ordinance; and
 - (c) all approvals described in Subsection (1)(b) are entered in writing on the plat by the designated officers.
- (2) A subdivision plat recorded without the signatures required under this section is void.
- (3) A transfer of land pursuant to a void plat is voidable.

10-9a-604.5. Subdivision plat recording or development activity before required infrastructure is completed - Infrastructure completion assurance - Infrastructure warranty.

- (1) A land use authority **shall establish objective inspection standards** for acceptance of a landscaping or infrastructure improvement required by the land use authority as a condition of:
 - (a) subdivision; or
 - (b) development activity.
- (2)
 - (a) A land use authority **shall require** an applicant to **complete a required landscaping or infrastructure improvement prior to any plat recordation or development activity.**
 - (b) Subsection (2)(a) **does not apply** if:
 - (i) upon the applicant's request, **the land use authority has authorized the applicant to post an improvement completion assurance** in a manner that is consistent with local ordinance; **and**
 - (ii) **the land use authority has established a system for the partial release of the improvement completion assurance** as portions of required improvements are completed and accepted.
- (3) At any time up to the land use authority's acceptance of a landscaping or infrastructure improvement, and for the duration of each improvement warranty period, the land use authority may require the developer to:
 - (a) **execute an improvement warranty** for the improvement warranty period; and
 - (b) **post a cash deposit, surety bond, letter of credit, or other similar security, as required by the municipality,** in the amount of up to **10%** of the lesser of the:
 - (i) engineer's original estimated cost of completion; or
 - (ii) applicant's reasonable proven cost of completion.

Plat Approval Issues (2014)

Intent: The provisions of this title are intended to **cover all subdivisions** within the meaning of the term "subdivision", as defined in section 11-1-2 of this chapter. [Section 11-1-1.A]

Compliance: It shall be **unlawful** for any person to offer to sell or lease, to contract to sell or lease, or to sell or lease any such subdivision or any part thereof which is located in the city until a **final plat** thereof, which is in full compliance with the provisions of this subdivision title, has been duly **recorded or filed** in the office of the county recorder. [Section 11-1-1.B]

Conceptual Plan, Premeeting and Approval: The developer shall prepare and submit a conceptual plan illustrating the basic design of the subdivision, and shall meet with the city's building official, public works director, and sewer district representative in order to discuss this plan and **obtain conceptual approval from them**. [Section 11-1-3.B]

Preliminary Plat Submission: **After conceptual approval** is obtained, the developer shall submit the required number of drawings of the preliminary plat with the required administrative fee to the city office two (2) weeks before first review by all affected utilities and interested entities, unless exempted under this title. The preliminary plat shall include all information required by this subdivision title. [Section 11-1-3.C]

Preliminary Plat Hearing: Once preliminary review by affected utilities and interested entities has been completed and all staff requirements have been met pursuant to the city's steps and checklist, a public hearing shall be scheduled before the planning commission to obtain its recommendation. All record owners of property within two hundred feet (200') of the proposed subdivision shall be notified by city staff of such public hearing as required by Utah Code Annotated 10-9a-207 and all notification as required by Utah Code Annotated 10-9a-205 shall be made. The **city council shall then review the preliminary plat to give approval**. [Section 11-1-3.D]

Construction Drawings: **After preliminary plat approval** has been given by the city council, the developer shall submit the required number of construction drawings to the city for distribution to the affected entities for their approval. [Section 11-1-3.E]

Final Plat Submission: After construction drawings have been approved and signed, all subdivision improvements have been installed in accordance with the preliminary plat and construction drawings, the per lot development fee has been paid, and a **performance bond [??]** equal to twenty five percent (25%) **[State law now restricts this to 10%]** of the cost for all subdivision improvements has been deposited with the city in accordance with section 11-3-5 of this title the developer may pursue final plat approval and recording of the Mylar plat, as outlined in this title. Prior to or at the time of obtaining the bond, the subdivider shall also execute the subdivision improvement cost overrun agreement required by subsection 11-3-5H of this title. All studies and tests on improvements that are required by this title shall be the responsibility of the developer unless there is an indication that they are to be provided by the city. [Section 11-1-3.F]

Final Plat Approval Hearing: Once final plat submission requirements have been met pursuant to the city's steps and checklist, the applicant shall schedule a final review before the planning commission to obtain its recommendation and the city council in order to obtain final plat approval. [Section 11-1-3.G]

Recording of Mylar Plat: After final plat approval has occurred and all necessary signatures have been obtained, the Mylar plat may be recorded as outlined in this title. [Section 11-1-3.H]

No person shall subdivide any tract or parcel of land located wholly or in part in the city, except in compliance with the provisions of this subdivision title. [Section 11-2-5]

See Section 11-3-2: Preliminary Plat *[goes to the City Council for approval]*

See Section 11-3-3: Construction Drawings *[does not go to the City Council for approval]*

Not more than one year after receiving preliminary plat approval, the developer shall prepare and submit a final plat to the planning commission for its review and recommendation, and to the city council for its approval. The city council may grant a onetime, one year extension of this time limit for good cause, but in no event may a final plat be submitted more than two (2) years after preliminary plat approval. The plat must include all information pursuant to this subdivision title. [Section 11-3-4, Intro. Para.]

Activities to be Completed Before Final Plat Review: Before final plat review by the planning commission and city council may be scheduled, all application fees and per lot fees must be paid. Construction drawings must be completed and signed off by all interested utilities and affected entities. Bonding must be in place for twenty five percent (25%) *[State law now restricts this to 10%]* of the construction cost. [Section 11-3-4.E]

Submission to City Attorney:

1. Prior to all other approvals and signatures,

a. The Mylar plat, and

b. A title report, and

c. Either:

- (1) A certificate of taxes paid (signed and certified by an authorized representative of the county treasurer's office, and dated not more than 30 days prior to the date on which the Mylar plat is submitted for review and approval) that all outstanding taxes and special assessments associated with and payable on all property situated within the boundaries or limits of the subdivision have been paid in full, or
- (2) A letter, approved in writing by the county treasurer, stating that a satisfactory bond has been filed with the county to secure such payment, and

- d. **Proof of bonding** and related documents, as specified in this subdivision title,

Shall be submitted to the city attorney for his or her review.

2. The **city attorney shall verify** the following, after which he or she shall submit the Mylar to the planning commission and city council for consideration and action:
 - a. That the subdivision **complies with city ordinances and the laws** and administrative rules of the state;
 - b. That *ownership of the property being subdivided and dedicated as shown on the plat is confirmed by the title report;* and
 - c. That the **bond(s), or equivalent as approved, is/are in appropriate form** and signed by the parties, and that the subdivider or developer has signed the subdivision improvement cost overrun agreement described in subsection 11-3-5H of this chapter.
3. Before recommendation and approval can be given by the planning commission and city council, final approval by the city engineer and city attorney must be obtained.

[Section 11-3-4.F]

Signatures and Recording:

1. All signatures required by this chapter, except those of the mayor, city recorder, city attorney, and the county recorder shall appear on the final plat prior to submitting said plat to the city council for final approval.
2. After the city council verifies that **all conditions of this chapter have been met and that a satisfactory bond has been posted** with the city and that all taxes and fees have been paid or bonded for (as specified in this subdivision title), and that the subdivider or developer has signed the subdivision improvement cost overrun agreement described in subsection 11-3-5H of this chapter, the mayor, city recorder and city attorney shall sign the Mylar.
3. However, the **plat is not effective** (and no lots may be sold) **until** the plat has been **recorded** by the city.

[Section 11-3-4.G]

Dedications: The recording of the final plat constitutes a legal dedication of all public streets, parks, utility easements, and similar dedications identified on the plat. However, pursuant to Utah Code Annotated section 10-9A-607(2), such dedication does not impose liability upon the municipality for streets and other public places that are dedicated in this manner but are unimproved. [Section 11-3-4.H]

See Sections 11-3-5: **Performance Bond or Equivalent** (a misnomer; actually a 25% warranty bond) *[State law now restricts this to 10%]* and Section 11-3-6: Installation of Improvements (*below*):

11-3-5: PERFORMANCE BOND OR EQUIVALENT:

- A. **Type of Bond or Guarantee:** The bond or guarantee shall be **in the form of cash** deposited with the city and held in an interest bearing account, *or a letter of irrevocable credit* from an approved institution or such other cash security bond as the subdivider may obtain that is approved by the city.

- B. Amount of Bond: The bond shall be equal to **twenty five percent (25%)** *[State law now restricts this to 10%]* of the total cost of all subdivision improvements. The subdivider shall furnish an estimate of the cost of constructing the required improvements. Said estimate shall be prepared by an engineer registered to practice in the state. However, no estimate may be used as the basis for the amount of the bond until it has been approved by the city engineer.
- C. Duration: The duration of the bond shall be for one year from the date of approval of the final plat of the subdivision by the city council.
- D. Final Inspection and Partial Release of Bond or Default: The subdivider shall be responsible for the quality of all materials and workmanship of all improvements. No later than one year from the date of approval of the final plat by the city council, the city engineer and public works director shall make a preliminary inspection of the improvements and shall submit a report to the city manager, setting forth the conditions of such facilities. If the improvements are completed, all liens are paid, and conditions thereof are found to be satisfactory, the city manager shall release the bond. If conditions or materials or workmanship show unusual depreciation or do not comply with the standards of the city in effect at the time of final plat approval, or if any outstanding liens are not paid, the procedures in subsection F of this section shall be followed.
- E. Final City Acceptance: **The subdivider shall be responsible for the subdivision improvements for a period of one year after said improvements are completed.** In accordance therewith, the twenty five percent (25%) cash bond, or equivalent as approved, which is retained after completion of the improvements, shall be preserved in escrow by the city for a period of one year to assure that if latent defects or other problems with the improvements are found, whereby the improvements fail to meet city standards, such defects and/or problems are repaired and made to comply with city standards. Ninety (90) days prior to the one year anniversary of the date the twenty five percent (25%) *[State law now restricts this to 10%]* deposit or bond or security is created, the city engineer and public works director shall again inspect the improvements and shall make a checklist of any needed repairs and a report of the condition of the facilities, which shall then be submitted to the city manager. If the improvements are satisfactory at the time of this inspection, the city manager shall direct that the twenty five percent (25%) *[State law now restricts this to 10%]* deposit, bond, or security retained in escrow shall be released to the subdivider. If defects or problems are found at this inspection, the procedures in subsection F of this section shall be followed. Once the needed repairs and improvements have been made and are acceptable to the city, and after the city has received all required drawings of record showing any changes to the improvements, the city shall release any remaining deposit or bond or security amount and **shall make final acceptance of and assume responsibility for the public streets, public property and the city infrastructure within the subdivision.**
- F. Default: If an inspection reveals that the improvements are deficient, the city shall notify the subdivider that he is in default, and set a reasonable time period, not to exceed ninety (90) days, to correct the problem. At the end of the specified time, the property shall be reinspected, and if the improvements still fail to meet the required standards and the subdivider has not submitted to the city and obtained approval of a plan with a deadline to correct the problem, the city council shall notify the subdivider of the date a public hearing shall be held on the issue, at which the subdivider shall be entitled to demonstrate why all or part of his bond should not be forfeited to be used to remedy the problem. The city council shall decide the matter and issue written findings on the same no later than thirty (30) days after the public hearing. If the city council's decision after the hearing is that the subdivider is still in default and no agreement with a deadline between the city and the subdivider has been made to fix the problem, the city council may declare his cash deposit or bond or equivalent forfeited, and the city may use the same to repair or install the required improvements. In such case, if the bond is found to be insufficient to cover the reasonable cost of completing or repairing the improvements, the city may enforce the terms of the subdivision improvement cost overrun agreement described in subsection H of this section. Once the needed repairs and improvements have been made and are acceptable to the city, and after the city has received all required drawings of record, the city shall release any remaining bond or equivalent, less twenty five percent (25%) in the case of a bond for original improvements, which twenty five percent (25%) bond shall be held pursuant to subsection E of this section.
- G. Bond Forfeiture: In the event a subdivider and the city enter into an agreement with a deadline for the subdivider to remedy a problem with the subdivision improvements, if upon inspection by the city it is found that the subdivider has substantially failed to live up to the terms of said agreement and/or failed to meet the agreed deadline, the city council may declare his bond to be forfeited and use the proceeds thereof to correct any problem that may exist with said improvements, and may also pursue enforcement of his subdivision improvement cost overrun agreement if required. No extension of the agreed deadline beyond thirty (30) days shall be allowed.

- H. Subdivision Improvement Cost Overrun Agreement: Prior to or at the time of the obtaining of any bond under this section, the subdivider shall also sign a subdivision improvement cost overrun agreement, on a form approved by the city. This agreement shall provide that if the city council declares a bond forfeited under this section, and the bond is found to be insufficient to cover the cost of installing or repairing the improvements, the city may file a lien upon any of the subdivision property owned by the subdivider, or may otherwise bring legal action pursuant to said agreement against the subdivider or his properly acknowledged successor, for the difference between the amount of the bond and the cost of installing or repairing the improvements. Said agreement shall provide that the subdivider shall be responsible for all legal fees and costs of such an action.
- I. Absence of Bond: In the absence of a bond or equivalent, the subdivision plat will not be approved by the city for recordation. (Ord. 2006-34, 10-4-2006)

11-3-6: INSTALLATION OF IMPROVEMENTS:

- A. Responsibility for Studies and Tests: All studies and tests on improvements that are required by this title shall be the responsibility of the developer unless there is an indication that they are to be provided by the city.
- B. Inspection and Testing: The subdivider shall install all improvements required by the city council including, but not limited to, curb and gutter, sidewalk, culinary water, utilities, secondary water connections, streets and drainage. The city may require the subdivider to pay for all or a portion of the cost of extending improvements from the nearest point of existing improvements to the subdivision, in accordance with the Utah impact fees act. The layout of the subdivision must provide for future extension of improvements to adjacent properties and shall be compatible with appropriate LaVerkin City master plans. All underground improvements shall be installed to the boundary lines of the subdivision. Geotechnical investigation recommendations shall be followed when installing all improvements. All construction work involving the installation of improvements shall be subject to inspection and testing by LaVerkin City for quality control. Requests for inspections shall be made to the LaVerkin City representative by the person responsible for the construction, which inspections shall occur within a reasonable time. The city shall give notice twenty four (24) hours in advance that it will be performing the required inspection. Any work to be backfilled or covered shall not be backfilled or covered prior to inspection. If the subdivider fails to remedy any deficient condition after the same has been identified by a city inspection, the city may issue a stop work order, requiring that all work on the subdivision by the subdivider must be stopped until the deficiency is remedied. If such a stop work order is issued, no building permit may be obtained by the subdivider, and no sales of lots by the subdivider/developer or its agent or affiliate may occur until the stop work order is removed.
- C. Drawings of Record: After final installation of all improvements and the final inspection and approval of the same, the contractor shall provide a complete set of drawings of record for all improvements that includes all items listed in the construction drawings and any improvement dimensions or changes to the improvements as they were constructed in the field. The drawings shall be submitted on twenty four inch by thirty six inch (24" x 36") sheets. **No bond shall be released until drawings of record are received, and if changes were made to improvements, a new drawing of record for such improvements shall be submitted, as appropriate, before release of the bond.** A submittal of drawings of record shall include a transmittal letter, in duplicate, containing: submittal date, project title, and the signature of the contractor or the contractor's authorized representative. The transmittal letter shall also include certification by a professional engineer or surveyor, licensed in the state of Utah, that each drawing of record is complete and accurate. (Ord. 2006-26, 8-2-2006)

St. George City Code, Title 11 - Subdivisions

Chapter 5 IMPROVEMENTS

11-5-1: DRAWINGS:

- A. Construction Drawings: Construction drawings which are required by the city, including, but not limited to, drawings required for review by the JUC, shall be reviewed concurrently by city staff in accordance with policies, guidelines and procedures set forth by the city. If the final plat has not already been submitted, then the final plat shall be submitted with the construction drawings so that this concurrent review can take place.
- B. Approved Construction Drawings: Prior to commencement of construction, plans prepared by the subdivider's engineer for improvements as outlined in the city's standard specifications for design and construction, as amended and supplemented from time to time, shall be approved by all required departments. The construction drawings shall identify those improvements which are to be accepted and maintained by the city and improvements which are to be maintained by private entities.
- C. Submittal of Construction Drawings: Following city council approval of the preliminary subdivision plat and while the preliminary subdivision plat is effective, the subdivider or subdivider's authorized representative shall submit the required number of construction drawings and JUC drawings, along with the required number of copies of the final plat to the city engineer or designee for review and approval by all required departments, agencies and bodies. No work of any kind shall commence until all construction drawings are stamped "approved for construction". Once the final plat and the construction drawings are approved by the appropriate city officials and other agencies and bodies, construction may begin. If the final plat has received staff approval and is ready to be scheduled for final approval by the commission and city council, construction of improvements may begin; provided, that the subdivider executes an indemnity agreement, approved by the city attorney. After the completion of all improvements, drawings of record shall be submitted to the city. In any event, drawings of record shall be submitted no later than the time the guarantee of improvements is released and prior to building permit issuance. (Ord. 2013-03-006, 3-7-2013)

11-5-2: COMPLETION OR GUARANTEE OF IMPROVEMENTS PRIOR TO RECORDING FINAL PLAT OR DEVELOPING REAL PROPERTY; ACCEPTANCE PROCESS:

- A. Completion or Guarantee: The improvements required by this chapter shall be constructed and installed by the subdivider and maintained by the subdivider until accepted by the city. Improvements shall be completed prior to recording the final plat in the office of the county recorder, unless the construction, installation and maintenance are guaranteed in the manner provided in section 11-5-5 of this chapter.
- B. Acceptance Process: Required improvements shall not be accepted by the city and the warranty period thereon shall not expire until the required improvements have been fully installed and been in successful operation for the one year warranty period, except when the city determines for good cause that a two (2) year warranty is necessary as provided in Utah Code Annotated 10-9a-604.5, or its amendment.
 - 1. Approval of Improvements: After the completion of all subdivision improvements, the subdivider shall make a written request to the city for an approval inspection to be made by all affected city departments. Upon receipt of inspection reports from all affected departments, the city will either approve the improvements or provide the subdivider with a list of defective work to be completed before approval. The subdivider shall correct all defective work and materials and make written requests to the city for additional inspections, as may be required. Once the city approves the improvements, a summary of the inspections and approval shall be provided to the subdivider.
 - 2. Warranty Period: The warranty period shall start on the date the city approves all of the improvements and the subdivider provides the city with a warranty document in a form approved by the city. Subdivider shall warrant all improvements for a period of time as set forth in this subsection B. If, during the warranty period, the city finds any

improvements to be defective, the city shall provide subdivider or developer with a list of the defective work and subdivider shall correct all defects immediately except for improvements which, at the city's discretion, must be repaired by the city. Subdivider shall pay city for all repairs to defects in improvements which are repaired by the city during the warranty.

3. City Acceptance of Improvements: The subdivider shall schedule with the city an inspection on the improvements at the end of the warranty.
 - a. If the city finds that the work on the required improvements is defective and does not meet city standards, the city shall provide the subdivider with a list of the defective work which the subdivider must correct. The subdivider shall schedule additional inspections as necessary and shall, in a timely manner, completely correct all defective work which is identified by the city. After the city finds the subdivider has completely and satisfactorily completed all of the corrections to the defective work on the required improvements, then the city shall accept the improvements, commence maintenance of the improvements, and any warranty held by the city shall be released.
 - b. If the city finds that the work on the required improvements does not meet the city standards, the warranty, including, but not limited to, any applicable warranty bonds, escrow funds, or other warranty funds, shall be forfeited to the city and the city shall make the corrections to the improvements. The city shall accept the improvements after completion of the corrections.
4. Release of the Warranty: Release of the warranty or forfeiture of the warranty and city acceptance of the improvements does not waive the city's right to any

other remedy available at law. (Ord. 2013-03-006, 3-7-2013)

11-5-3: IMPROVEMENTS REQUIRED:

The design, installation, connection, and construction of all improvements required by this section shall comply with the city of St. George standard specifications for design and construction and shall be approved by the city before work begins. The improvements required to be completed before issuance of a building permit under this title shall include, but are not limited to, the following:

- A. Utilities and Services: . . .
- B. Storm Drainage and Nuisance Water Control: . . .
- C. Street Improvements: . . .

(Ord. 2013-03-006, 3-7-2013)

11-5-4: LAYOUT OF LOTS:

- A. Lot Arrangement: . . .
- B. Lot Dimensions: . . .
- C. Double Frontage Lots and Access to Lots: . . .
- D. Flag Lots: . . .

11-5-5: GUARANTEE OF IMPROVEMENTS AND WARRANTY:

- A. Guarantee of Improvements:
 1. When Required: The city, in its discretion, may allow a subdivider to record the final plat if the subdivider guarantees the installation and construction of the required improvements free from defects in material and workmanship and in compliance with all city standards.
 2. Form; Amount: The guarantee of improvements required under this subsection shall be in the form of a corporate surety bond, escrow agreement, or irrevocable letter of credit in a form acceptable to the city for an amount equal to one hundred twenty percent (120%) of the cost of improvements not previously accepted. The cost of improvements shall be approved by the city. All improvements not completed within one year shall

thereafter require a bond or other guarantee arrangement in an amount equal to one hundred fifty percent (150%) of the cost of the remaining improvements.

3. Release: The city shall release the guarantee of improvements under this subsection once all improvements are inspected and approved by the city as required by this chapter and the subdivider has submitted to the city a warranty in a form acceptable to the city.

B. Warranty of Improvements:

1. Required: Each subdivider shall warrant that all improvements required under section 11-5-3 of this chapter shall be free from defects in material and workmanship and that the improvements are in compliance with all city standards. The warranty period shall start on the date the city approves all of the improvements pursuant to section 11-5-2 of this chapter and the subdivider

provides the city with a warranty in a form approved by the city.

2. Form; Amount: The warranty required by this chapter shall be in the form of a corporate surety bond, escrow agreement, or irrevocable letter of credit in a form acceptable to the city for an amount equal to at least ten percent (10%) of the total improvement value for the warranty period.
3. Release: After the expiration of the warranty period, the city shall release the warranty held by the city under this chapter after the final inspection and acceptance of the improvements pursuant to section 11-5-2 of this chapter.

- C. Approval of City Attorney: The form of any guarantee of improvements or warranty submitted under this section shall be reviewed and approved by the city attorney before acceptance by the city. (Ord. 2013-03-006, 3-7-2013)

From LaVerkin City Hillside Ordinance:

Excerpt from Section 10-7A-4: APPLICATION PROCEDURE:

G. Bonding, Easement, and Restoration:

1. A surety bond, cash bond, or irrevocable letter of credit to assure hillside restoration shall be provided prior to issuance of a hillside development permit, along with a temporary travel, access, and construction easement ("temporary easement") to and upon the property to be developed.

a. Financial Guarantee:

- (1) Such financial guarantee shall be provided in an amount sufficient to ensure necessary removal of dumped materials, completion of revegetation projects, soil stabilization, the construction of stormwater drainage facilities, other hazard mitigation measures including grading, planting and maintenance, in the event the developer fails to complete the hillside restoration in accordance with the approved plan within two (2) years from the issuance of the permit; provided, that the city council may grant such additional time extension as may be necessary to allow completion of the restoration work in the event significant progress toward completion of the project is underway.

- (2) The financial guarantee shall cover and be in force for a period of three (3) years from the issuance of the hillside development permit; provided, however, that any extension in time for performance granted by the city shall require and be conditioned on the granting, by the developer, of an extension in the

duration of the financial guarantee that at least equals the amount of the duration of time for performance requested and granted.

- (3) Notwithstanding the provisions of subsection G1a(2) of this section, the city shall release its interest in the financial guarantee (or portion thereof remaining), for restoration purposes, at any time that the excavated or affected area of the development property is restored and accepted as complete by the mayor, city administrator, or designee thereof.

- (4) The surety bond, cash bond, or letter of credit shall cover the cost, as estimated by an approved landscape architect, or a geotechnical engineer and approved by the city engineer, to restore the hillside to an acceptable level of appearance and stability. In the case of a dispute over what constitutes an acceptable level of restoration, the decision of the city administrator shall be determinative.

b. Temporary Easement:

- (1) Such temporary travel, access, and construction easement ("temporary easement") shall: a) be granted by the property owner(s) of the property subject to the development request, b) run with the land, c) be in writing, d) be recorded in the office of the county recorder, e) apply to and cover the property subject to development approval, and f) be in force for a period of three (3) years from the issuance of the hillside development permit; provided, that:

(A) Any extension in time to perform under subsection G1b(1) of this section shall require and be subject to the granting by the property owner(s) of an additional and similar temporary easement to the city in the amount of time requested and granted, to run and continue from the end of time covered and granted under any such current temporary easement to the city from the property owner(s); and

(B) The city may release its interest in such temporary easement prior to the expiration of such documented easement, upon request, if and when the hillside restoration has been accepted as complete by the city and the restoration bond has been released.

(2) The temporary easement shall be granted to allow the city and its officials, employees, and contracted personnel to enter and remain upon the development property for purpose of: a) performing required unperformed hillside restoration, and removal and disposition of soils, vegetation and other debris that are deemed necessary by the city to complete such hillside restoration; b) traveling in, out, and upon said property for the duration of such hillside restoration related surveying, engineering, construction, and removal of soils, vegetation, and

debris; and c) parking city and other construction vehicles thereon, as needed for such hillside restoration, for the duration of such restoration efforts of the city and those contracted therewith.

(3) The rights granted pursuant to the temporary easement shall only be exercised by the city, and those taking thereunder, in the event that the hillside is not restored according to the approved restoration plan during the two (2) years following issuance of the hillside development permit.

2. In the event the developer fails to complete the hillside restoration to the satisfaction of the city, within two (2) years following the issuance of the hillside development permit, the city shall have the right to exercise its rights under the temporary easement and call upon and use the proceeds of the financial guarantee (provided for hereinabove) to:

- a. Restore all cuts with existing soil to approximate the natural lay of the land. If safety issues remain, brick, rock, block, stone, other natural materials may be used to create a safe slope.
- b. Revegetate all disturbed earth with grasses such as perennial rye, blue or fescue and/or shrubs like creosote, Apache plume, or Mormon tea. Other appropriate grasses and shrubs may also be approved by the city council.

(Ord. 2013-03, 4-3-2013)